

114TH CONGRESS  
1ST SESSION

# H. R. 3271

To amend the Federal Water Pollution Control Act to allow preservation leasing as a form of compensatory mitigation for discharges of dredged or fill material affecting State or Indian land, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 28, 2015

Mr. YOUNG of Alaska introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

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## A BILL

To amend the Federal Water Pollution Control Act to allow preservation leasing as a form of compensatory mitigation for discharges of dredged or fill material affecting State or Indian land, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. PRESERVATION LEASING OF STATE OR INDIAN**  
4 **LAND.**

5 (a) IN GENERAL.—Section 404 of the Federal Water  
6 Pollution Control Act (33 U.S.C. 1344) is amended by  
7 adding at the end the following:

1       “(u) PRESERVATION LEASING OF STATE OR INDIAN  
2 LAND.—

3               “(1) IN GENERAL.—The Secretary shall allow a  
4 permittee to satisfy compensatory mitigation re-  
5 quirements for a permitted activity by entering into  
6 a preservation lease with—

7                       “(A) a State if the permitted activity af-  
8 fects wetlands that are located in the same wa-  
9 tershed as the State land to be leased; or

10                      “(B) an Indian tribe if the permitted activ-  
11 ity affects wetlands that are located in the same  
12 watershed as the Indian land to be leased.

13               “(2) PRESERVATION LEASE.—As used in para-  
14 graph (1), a preservation lease is an agreement  
15 under which a permittee leases wetlands or other  
16 aquatic sites on State or Indian land for the sole  
17 purpose of preserving the wetlands or other aquatic  
18 sites in an undisturbed state during the term of the  
19 lease to mitigate for a permitted activity.

20               “(3) TERM.—In order to satisfy compensatory  
21 mitigation requirements, the term of a preservation  
22 lease may be not less than the life of the permitted  
23 activity, and such term shall be adjusted to account  
24 for the cessation, in whole or in part, of the impacts  
25 caused by the permitted activity.

1           “(4) SITUATIONS IN WHICH PERMITTEE CEASES  
2 TO MAINTAIN PERMITTED ACTIVITY.—

3           “(A) PERMIT MODIFICATIONS.—If a per-  
4 mittee enters into a preservation lease with a  
5 State or Indian tribe under this subsection and  
6 subsequently ceases to maintain the permitted  
7 activity, or seeks to abandon the permitted ac-  
8 tivity without a good faith transfer, the per-  
9 mittee shall obtain a permit modification from  
10 the Secretary, which may require restoration  
11 and rehabilitation of the area.

12           “(B) CONSULTATION WITH STATE OR IN-  
13 DIAN TRIBE.—Before making a determination  
14 under subparagraph (A) as to whether, and to  
15 what degree, restoration and rehabilitation are  
16 required, the Secretary shall consult, and fully  
17 consider, the position of the State or Indian  
18 tribe that is a party to any preservation lease  
19 associated with the permitted activity.

20           “(C) RESTORATION AND REHABILITATION  
21 PLANS.—

22           “(i) IN GENERAL.—If the Secretary  
23 determines under subparagraph (A) that  
24 restoration and rehabilitation are required,  
25 the Secretary may require the permittee to

1 submit to the Secretary and the State or  
2 Indian tribe, as appropriate, a plan for  
3 conducting the restoration and rehabilita-  
4 tion.

5 “(ii) CONTENTS.—A restoration and  
6 rehabilitation plan submitted under clause  
7 (i) shall include, at a minimum, goals and  
8 objectives, performance standards, and  
9 plans for site treatment, reporting, reme-  
10 dial work, and monitoring to ensure that  
11 performance standards are met.

12 “(D) REVERSION OF LAND.—After activi-  
13 ties conducted under a restoration and rehabili-  
14 tation plan submitted under subparagraph  
15 (D)(i) have been completed, and the  
16 hydrological functions and fish and wildlife  
17 habitat of the area impacted by the permitted  
18 activity have been restored pursuant to the res-  
19 toration and rehabilitation plan, the land sub-  
20 ject to the lease shall revert back to the State  
21 or Indian tribe, as appropriate, without restric-  
22 tion.

23 “(5) DEFINITIONS.—In this subsection, the fol-  
24 lowing definitions apply:

1           “(A) INDIAN LAND.—The term ‘Indian  
2 land’ means land owned by, operated by, or oth-  
3 erwise belonging to an Indian tribe.

4           “(B) INDIAN TRIBE.—The term ‘Indian  
5 tribe’ means any Indian tribe, band, nation, or  
6 other organized group or community, including  
7 any Alaska Native village or regional or village  
8 corporation as defined in or established pursu-  
9 ant to the Alaska Native Claims Settlement Act  
10 (43 U.S.C. 1601 et seq.), which is recognized as  
11 eligible for the special programs and services  
12 provided by the United States to Indians be-  
13 cause of their status as Indians.

14           “(C) PERMITTED ACTIVITY.—The term  
15 ‘permitted activity’ means a discharge of  
16 dredged or fill material for which a permit is  
17 issued under this section.

18           “(D) PERMITTEE.—The term ‘permittee’  
19 means a person that is issued a permit under  
20 this section.

21           “(E) STATE LAND.—The term ‘State land’  
22 means land owned by, operated by, or otherwise  
23 belonging to a State.”.

24           (b) APPLICABILITY.—The amendment made by sub-  
25 section (a) shall apply to permits issued under section 404

1 of the Federal Water Pollution Control Act (33 U.S.C.  
2 1344) after the date of enactment of this Act.

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